IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Misc. No.5725-M of 2007
Date of decision: February 01, 2007.

Kuldip Singh

...**Petitioner(s)**

v.

State of Punjab

...**Respondent(s)**

Present: S/Shri Mansur Ali & H.S. Deol, Advocates,
for the petitioner.

Surya Kant, J. (Oral)

Notice of motion.

Shri Amit Khanna, learned Assistant Advocate General, Punjab accepts notice.

In this petition under section 438 of the Code of Criminal Procedure, the petitioner seeks anticipatory bail in case arising out of FIR No.372 dated 27.10.1998, under sections 427, 447, 336, 353, 186, 148, 149 IPC and Section 25 of the Arms Act, registered at Police Station Division No.7, Jalandhar.

The aforesaid FIR was got registered on a written complaint made by the Estate Officer, Punjab Urban Development Authority at Jalandhar.

As the records reveal, the petitioner, who was on bail, had been appearing before the learned trial court till 8.10.2002, however, he started absenting from 22.4.2003 onwards. Non-bailable warrants were issued to secure his presence. The petitioner, however, did not surrender before the court even thereafter which led to initiation of proceedings under section 82, 83 Cr.P.C. The petitioner was later on declared a proclaimed offender.

From the zimni orders passed by the learned Judicial Magistrate from time to time including the last order dated 4.11.2006, it is apparent that the petitioner has been closely watching the ongoing trial but he has

successfully evaded the execution of the non-bailable warrants issued against him.

Consequently, the discretionary relief of pre-arrest bail cannot be extended to the petitioner.

Dismissed.

The matter, however, does not end here.

The order dated 4.11.2006 passed by the learned Judicial Magistrate First Class narrates the sordid affairs as to how the prosecuting agency has taken the court for a ride. No prosecution witness has been produced despite repeated opportunities given by the court to the prosecution for years together. Least to say, the authorities in the PUDA as well as the SSP, Jalandhar have acted in such an irresponsible manner that an immediate action by this Court is warranted against them. The PUDA authorities as well as the prosecuting agency owe a duty to explain their conduct as to why the trial court's time, which ought to have been utilized to decide the fate of some hapless litigant, has been taxed with immunity and yet no evidence has been led thereby compelling the learned trial court to adjourn the case *sine-die*.

Consequently, this petition is disposed of with the following directions:-

(i)(a) The Chief Administrator, PUDA; (b) the SSP, Jalandhar; © the Estate Officer, PUDA at Jalandhar are personally directed to move an application before the learned Judicial Magistrate to recall the order dated 4.11.2006, within two weeks from the date of receipt of a certified copy of this order and explain their conduct as to why the prosecution witnesses could not be produced;

(ii) the learned Judicial Magistrate may, if satisfied with the explanation furnished by the above named authorities, recall the order dated 4.11.2006 and proceed with the trial;

(iii) however, if he finds that some of the prosecution witnesses, either at the instance of the petitioner or for some other extraneous considerations, are not deliberately appearing, he may secure their presence through coercive methods;

(iv) it is further directed that if the Chief Administrator, PUDA,

the SSP, Jalandhar and the Estate Officer, PUDA at Jalandhar are found responsible for any remiss or inaction in relation to compliance of this order, they shall be personally burdened with exemplary costs, apart from an action under the Contempt of Courts Act, 1971;

(v) the learned Judicial Magistrate shall keep on sending status report to this Court regarding compliance of directions No.(i) to (iv) above.

Disposed of.

Let a copy of this order, duly authenticated under the signatures of the Bench Secretary, be supplied to Shri Amit Khanna, learned AAG, Punjab, at the earliest, for information and necessary compliance.

February 01, 2007. [**Surya Kant**]
kadyan **Judge**